

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD JOSEPH NANKERVIS,

Defendant-Appellant.

UNPUBLISHED

May 24, 2007

No. 269106

Wayne Circuit Court

LC No. 05-005452-01

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendant appeals his jury trial convictions of first-degree home invasion, MCL 750.110a(2), and felonious assault, MCL 750.82. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 6 to 15 years in prison for the first-degree home invasion conviction and two to four years in prison for the felonious assault conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant says that the evidence presented at trial was insufficient to identify him as the person who committed the crimes charged, or, alternatively, that the court erred in denying his motion for a directed verdict. We disagree. When considering a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecution, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

Defendant argues that the prosecution's evidence was insufficient for a reasonable jury to conclude that defendant committed the crimes charged. He contends that there was no evidence he was ever inside the victim's house because the victim could not identify the perpetrator. He also maintains that no reasonable jury could conclude that the knife discarded by defendant as he fled the scene was the same one wielded against the victim inside her home because the knife was not entered into evidence. He argues that the prosecution's failure to produce this evidence should raise a presumption that, if the evidence were produced, it would operate against the

prosecution's case, similar to the failure to produce a witness. Further, defendant points out inconsistencies between the reports made by the police officers after the incident and their trial testimony. Finally, defendant points out that the trial testimony indicated both that defendant had limited use of his wrist as a result of an operation and that the perpetrator moved a large piece of furniture away from a first floor window in order to enter the home.

The elements of first-degree home invasion are: (1) the defendant broke and entered a dwelling or entered the dwelling without permission; (2) when the defendant did so, he intended to commit a felony, larceny, or assault, or he actually committed a felony, larceny, or assault while entering, being present in, or exiting the dwelling; and (3) the defendant was armed with a dangerous weapon or another person was lawfully present in the dwelling. See *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004); MCL 750.110a(2). The elements of felonious assault are: (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999); MCL 750.82. A knife is a dangerous weapon for purposes of both crimes. MCL 750.110a(1)(b)(ii); MCL 750.82(1). The identity of the defendant as the perpetrator of a crime is an essential element of every case. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967).

Defendant does not contest the proof of any of the specific elements of the above crimes. Rather, he argues that the prosecution's evidence was insufficient for a reasonable jury to conclude that defendant committed those crimes. We disagree.

The evidence presented at trial was sufficient for a reasonable jury to conclude that defendant was the perpetrator. The victim testified that a man wearing her raincoat and with one of her aprons wrapped around his face came into her bedroom holding a large knife. The victim called the police from her cellular telephone when the perpetrator went downstairs. When the two police officers arrived, one officer went to the back of the house and saw defendant come out the back door with a large knife and a bag in his hands. Both officers pursued defendant, who threw the knife into the air as he fled. The police later recovered the knife and found the raincoat on the stairs inside the victim's house. Defendant testified that he accompanied the actual perpetrator to the premises and waited for him outside, that he received some bottles of alcohol from him, and left when the police arrived. He testified that he never entered the premises, and never pointed a knife at the victim. When defendant was arrested, he had a bag containing alcohol and a radio; he did not have other items that the victim testified were taken. Defendant argues that because the knife was not in evidence, it was unreasonable for the jury to conclude that the knife wielded by the perpetrator was the same knife the officers later saw defendant holding. Defendant further points to inconsistencies in the police testimony and the victim's inability to identify him. However, the victim's testimony, that a man threatened her with a knife, combined with the police officer's testimony that he saw defendant run out the back door holding a knife, is more than sufficient to sustain the inference that defendant was the perpetrator and that the victim and the police officer were describing the same knife.

Defendant also argues that the failure to produce the knife, which was under the control of the police and prosecutor, should have raised a presumption that, if produced, it would operate against the prosecutor, similar to the failure to produce a witness. Defendant cites *People v Perez*, 469 Mich 415; 670 NW2d 655 (2003), in which the defendant argued that the trial court erred in failing to give a jury instruction on the prosecution's failure to present a witness.

Defendant's argument on appeal, however, is that the evidence is insufficient to support the jury's verdict; he does not argue that the trial court erred in instructing the jury. Moreover, there is no comparable jury instruction on the prosecution's failure to produce real evidence.

Defendant also notes that while one of the police officers testified at trial that defendant threw a knife into the air during the pursuit, the officer admitted at trial that there is no mention of a knife in the report he wrote shortly after the incident (the officer emphasized that his partner's report does mention a knife). However, it was for the jury to weigh the credibility of the police officers and determine the significance of omissions and discrepancies in their reports. The jury may reasonably have credited police testimony that such reports are written quickly and that partners rely on one another to remember and record details of an incident. Defendant also argues that the first police officer's report, contrary to his trial testimony, stated that the officer never saw defendant in the house. However, no testimony on that point was elicited at trial.

Similarly, it was for the jury to weigh the testimony concerning the condition of defendant's wrist against the victim's statement that the table the perpetrator pushed away from the window in order to enter the house was not difficult to move.

We conclude that the evidence was sufficient to support defendant's convictions and that the trial court did not err in denying defendant's directed verdict motion.

Affirmed.

/s/ Helene N. White
/s/ Henry William Saad
/s/ Christopher M. Murray